IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24/02/2003

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CRIMINAL REVISION CASE NO.169 OF 2003
AND
CRL.M.P.Nos.1480 AND 1481 OF 2003.

Mohd.Amjath Ali ... Petitioner

-Vs-

State, by
The Deputy Superintendent of Police,
Special Investigation Team
(in B-1 P.S.Crime No.151/98)
Coimbatore. ... Respondent

Criminal Revision Petition filed under Section 397 r/w.401
Cr.P.C. for the reasons as stated therein.

For petitioner : Mr.S.Sathiachandran

For respondent : Mr.I.Subramanian,
Public Prosecutor,
for Mr.O.Srinath,
Government Avocate (Crl.side)

:O R D E R
The petitioner/20th accused in Sessions Case No.2 of 2000 pending on the file of the Court of the Sessions Judge for trial of Bomb Blast Cases, Coimbatore who is alleged to be facing serious allegations such as that he acted as a `human bomb' in the bomb blasts that took place in Coimbatore and facing the charges under Sections 302 IPC (four counts), 120-B, 307 IPC and under various Sections of the Indian Explosives Act, has come forward to file the above criminal revision case praying to call for the entire records connected to the impugned order dated 3.10.2002 made in Crl.M.P.No.440 of 2002 by the trial Court and quash the same further directing the trial Court to permit the petitioner to engage a counsel of his choice to defend him in the Sessions Case No.2 of 2000 on State Brief.

2. The averments of the petition are that the petitioner is aged about 23 years and initially he engaged the defence counsel on his own, but the case has taken nearly four years to attain the pre-trial stage itself, during which period he was confined in Central Prison, Coimbatore; that when the trial commenced, he was given to understand that there were around 2500

prosecution witnesses and at the rate if the trial is held for four days in a week, as is done, it would take nearly 3 to 4 years for those evidence to be brought on record and for this length of period, the petitioner could not afford to bear the cost of a private defence counsel and therefore he filed a petition on 27.9.2002 before the trial Court seeking to permit him to engage a State Brief Advocate at the cost of the State in Crl.M.P.No.440 of 2002 in the said Sessions Case, but holding that the petitioner was undefended and was not being represented by a counsel, the case was adjourned to 3.10.2002 and on that day, he was asked to choose a counsel from out of the 26 State Brief Advocates who were already on record; that the petitioner expressed his desire to engage a counsel of his choice from outside the panel as the 27th State Brief counsel since originally the Government had sanctioned 27 State Brief Advocates to conduct the trial in the said case and in the vacant place, the petitioner could be provided with to appoint a counsel of his choice; that on 3.10.2002, the trial Court rejected the petitioner's plea for engaging an Advocate of his choice to defend him on State Brief and appointed one Mr.Dhanaraj Cangan as the petitioner's counsel on State Brief, which is arbitrary, illegal and against the principles enunciated by the upper forums of law and hence the same is liable to be set aside.

3. On such facts, the petitioner, almost repeating the same arguments in the grounds of the revision, would seek for the relief extracted supra.

4. In the counter affidavit filed on behalf of the State, besides highlighting the series of explosions which occurred in and around Coimbatore on 14.2.1998 killing 58 persons and injuring 250 in which the final report has been filed on 5.5.1999 against 167 accused and one approver, the counter affidavit would state that crossing several hurdles, the Special Court was able to frame the charges on 23.1.2001 pursuant to the orders of the Honourable Supreme Court in SLP. (Criminal) No.1228 of 2001 and commenced the trial on 7.3.2002. Further, furnishing the details regarding the sanction of the Government by G.O. to appoint 27 Advocates to defend the 167 accused as per G.Os.227 and 298 Home respectively dated 27.7.2001 and 17.10.2001 and fixing the fee of each of such counsel, the counter would state that the trial of the serial bomb blast cases started making progress resulting in the examination of 295 witnesses, all the accused having been effectively defended by the counsel appointed by the Government barring only the petitioner, who filed the application on 27.9.2002 praying to appoint a private counsel at the cost of the Government, in Crl.M.P.No.44 0 of 2002 and the trial Court dismissed the same on 3.10.2002 but appointing one Mr.Dhanaraj Cangan, Advocate, one among the 27 Advocates appointed by the Government, as the State Brief for the petitioner, that too on failure of the petitioner to make a mention of the name of anyone of those Advocates of his choice for being appointed to defend him. Aggrieved against the said order, the petitioner has come forward with the above criminal revision case.

5. Tracing the history of the Al-umma cadre of Melapalayam and its activities and the petitioner's association with the same, the conspiracy hatched, the execution of the same by the suicide squad formed and others, tying around their waists the box bombs, their targets of the day and

thereafter the commencement and continuance of the trial, the onerous responsibility cast on the special Court etc., the counter affidavit would contend that the petitioner does not want to be represented by anyone of the 26 State Brief Advocates who are already on record representing all the accused persons and stressing the appointment of a new counsel of his choice, he could only cause unnecessary delay in the conduct of the trial, which is undesirable in the wake of the high responsibility cast on not only the Court but every one concerned with the case wherein the accused are 167, the witnesses to be examined in toto being 2339 and the case bundle ranging more than 5000 pages and therefore it is neither feasible to attend to the request of the petitioner to appoint an Advocate of his choice outside the panel at the expense of the State nor is it the requirement of law and the objection of the petitioner that his case could be not be handled effectively is neither correct nor sustainable nor is it legal nor in adherence to the principles enunciated by the Honourable Supreme Court of India and hence the counter would ultimately pray to dismiss the petition directing him to choose anyone of the Advocates among the 26 State Brief Advocates already on record and to proceed with the trial.

6. During arguments, both the learned counsel appearing on behalf of the petitioner and the learned Public Prosecutor, High Court, Madras would lay stress on their respective stand-points pleaded in the petition and the counter respectively, besides the learned counsel for the petitioner citing from the decided cases of the upper forums of law particularly the Honourable Supreme Court of which those which are relevant for consideration are:

1. AIR 1966 S.C. 1910 (STATE OF MADHAYA PRADESH vs. SHOBHARAM AND OTHERS)

2. AIR 1978 S.C. 1548 (MADHAV HAYAWADANRAO HOSKOT vs. STATE OF MAHARASHTRA)
3. AIR 1979 S.C. 1369 (HUSSAINARA KHATOON AND OTHERS vs. HOME SECRETARY, STATE OF BIHAR, PATNA) and
4. AIR 1981 S.C.928 (KHATRI AND OTHERS vs. STATE OF BIHAR AND OTHERS).

7. In the first judgment cited above, a Constitution Bench of the Honourable Apex Court has held:

"The Criminal P.C. allows the right to be defended by counsel but that is not a guaranteed right. The framers of the Constitution have well-thought of this right and by including the prescription in the Constitution have put it beyond the power of any authority to alter it without the Constitution being altered."

"A person arrested and put on his defence against a criminal charge, which may result in penalty, is entitled to the right to defend himself with the aid of counsel and any law that takes away this right offends the Constitution."

So holding, the Honourable Apex Court has held Section 63 of the Madhya Bharat Panchayat Act, as void being inconsistent with Art.22(1) of the Constitution

in so far as it took away the right of an arrested person to be defended by a legal practitioner of his choice.

8. In the second judgment cited above, it has been held:

"Where the prisoner is disabled from engaging a lawyer, on reasonable grounds such as indigence or incommunicado situation, the Court shall, if the circumstances of the case, the gravity of the sentence, and the ends of justice so require, assign competent counsel for the prisoner's defence, provided the party does not object to that lawyer."

9. In the third judgment cited above, it has been held:

"Article 39-A of the Constitution also emphasises that free legal service is an unalienable element of `reasonable, fair and just' procedure for without it a person suffering from economic or other disabilities would be deprived of the opportunity for securing justice. The right to free legal services is, therefore, clearly an essential ingredient of `reasonable, fair and just' procedure for a person accused of an offence and it must be held implicit in the guarantee of Article 21. This is a constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty, indigence or incommunicado situation and the State is under a mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of justice so required, provided of course the accused person does not object to the provision of such lawyer."

10. The proposition held in the third judgment above has been followed by the Honourable Apex Court in the fourth judgment cited supra.

11. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, what could be assessed by this Court is that the petitioner, not willing to choose one among those 26 Lawyers approved by the G.Os. of the Government as the State Brief Advocates cited supra, would file an application before the lower Court seeking permission to appoint his own counsel to defend him outside the panel of 26 Lawyers, at the cost of the State. It is relevant to point out, at this juncture, that all other accused from out of 167, with the single exception of the petitioner, have agreed to appoint a Lawyer from those who are figuring in the panel approved by the Government and the trial Court, for reasons assigned on a lengthy discussion held on all the vital aspects of the case and the counter arguments, has not only dismissed the claim of the petitioner but also has appointed an Advocate by name Mr.Dhanaraj Cangan as the State Brief to defend the petitioner.

12. It is further relevant to extract the operative portion of the order of the lower Court:
"In such circumstances, if the concerned accused seeks the assistance of the Court to engage a Pleader to defend him at State's expenses, the same can be done under Section 304 Cr.P.C. and there cannot be any objection for

providing assistance to the petitioner by appointing a State Brief Advocate to defend the case on his behalf. But, while granting such assistance, it should be kept in mind that the choice of the Advocate is that of the Court and not that of the accused.... Petitioner does not want to be represented by anyone of the 26 State Brief Advocates who are already on record representing all other accused persons."

On such remarks, the trial Court has dismissed the prayer of the petitioner, testifying the validity of which the petitioner has come forward to file the above criminal revision case on such grounds extracted supra.

13. In the above circumstances, it is relevant to seek recourse to the provisions of law concerned with the subject, which are Sections 303 and 304 of the Cr.P.C. They are:

"303. Right of person against whom proceedings are instituted to be defended - Any person accused of an offence before a Criminal Court, or against whom proceedings are instituted under this Code, may of right be defended by a pleader of his choice.

304. Legal aid to accused at State expense in certain cases -

(1) Where, in a trial before the Court of Session, the accused is not represented by a pleader, and where it appears to the Court that the accused has not sufficient means to engage a pleader, the Court shall assign a pleader for his defence at the expense of the State.

(2) The High Court may, with the previous approval of the State Government, make rules providing for-
(a) the mode of selecting pleaders for defence under Sub-section (1);
(b) the facilities to be allowed to such pleaders by the Courts;
(c) the fees payable to such pleaders by the Government, and
generally, for carrying out the purposes of sub-section (1).
(3) The State Government may, by notification, direct that, as from such date as may be specified in the notification, the provisions of sub-sections (1) and (2) shall apply in relation to any class of trials before other Courts in the State as they apply in relation to trials before Courts of Session."

14. From among the above two Sections, Section 303 Cr.P.C. generally speaks about the `right of the accused to be defended by a Pleader of his choice', meaning thereby that in the selection of the counsel, absolutely there cannot be any obstacle or hindrance for the accused, provided the selection is on his own and at his own cost. This aspect is not at all denied by the respondent/State but the claim of the petitioner/accused is that he must be given the opportunity to choose an Advocate of his choice, not anyone from the panel of Lawyers approved by the Government numbering 26 in the case in hand, but from outside and at the cost of the State.

15. In order to get an answer for this claim of the petitioner, we have to resort to Section 304 Cr.P.C. which deals with the `legal aid to accused at State expense in certain cases' wherein it appears to

the Court that if the accused has no sufficient means to engage a Pleader, the Court shall assign a Pleader for his defence at the expense of the State. The language employed by the Section is plain and simple. So far as the petitioner not having sufficient means to engage a Pleader is concerned, it is an admitted fact on the part of the petitioner that he cannot afford to engage his own counsel at his cost and in such event, the Section continues to say that `the Court shall assign a Pleader for his defence at the expense of the State' meaning thereby that the choice of the Pleader to defend such an accused, who is unable to appoint a counsel of his choice on his own at his own expenses, is that of the Court and it has been mandatorily held by the Section that it is the Court which shall assign the Pleader for his defence and at the expense of the State, needless to mention that the choice is not that of the accused. Therefore, this Court is of the firm view that no other meaning or interpretation could be drawn to mean that under such circumstances, the accused could pick and choose his own counsel from outside the panel provided for by the Government through the G.O. and in spite of such facility made and the option kept open, if the accused fails to choose a counsel of his choice from out of the panel of Advocates numbering 26 made available, it is the Court which shall appoint a suitable Advocate of its own choice from the Panel to defend the accused and in this case, the trial Judge has rightly acted in accordance with the letter and spirit of Section 304 Cr.P.C. naming the Advocate who is to defend the petitioner viz. Mr.Dhanaraj Cangan, who is one among the panel of lawyers.

16. So far as the judgments cited on the part of the petitioner are concerned, the Honourable Apex Court, in the first judgment cited above, has generally insisted the entitlement of the accused to defend himself with the aid of a counsel and in the second judgment has insisted that the Court shall assign competent counsel for the petitioner's defence. In the third and fourth judgments, the Honourable Apex Court has insisted the constitutional right of every accused person, who is unable to engage a Lawyer and secure legal services on account of reasons such as poverty, indigence or incommunicado situation and held that the State is under a mandate to provide a lawyer to an accused person if the circumstances of the case so requires. In the case in hand, the State has provided with the panel of lawyers, 27 in number, and in spite of all the other accused have chosen their State Brief Advocates from among the lawyers in the approved panel, the petitioner, with no better cause shown or reason assigned, has come forward to differ from the same and has insisted to appoint a counsel of his choice outside the panel at the State expense, which in the circumstances, since being not feasible, it had become incumbent on the part of the trial Court to appoint a lawyer of its own choice from the panel itself as the State Brief Advocate for the petitioner.

17. In the above circumstances, the trial Court, in appointing the defence counsel for the petitioner, has done just what is advocated by the Section and nothing else. Therefore, this Court is of the view that the appointment of the lawyer effected by the trial Court is well in tune with the insistence of the Honourable Apex Court since the petitioner has not been deprived of the opportunity of being defended by a counsel. As such, this Court is unable to see any inconsistency or infirmity or patent error of

law to have crept into the order passed by the trial Court and therefore the interference of this Court sought to be made into the well considered and merited order passed by the Special Court for the trial of Bomb Blast Cases, Coimbatore is neither necessary nor warranted in the circumstances of the case and ultimately the above criminal revision case only becomes liable to be dismissed.

In result,

(i)there is no merit in the above criminal revision case and the same is dismissed accordingly.

(ii)The order dated 3.10.2002 made in Crl.M.P.No.440 of 2002 in Sessions Case No.2 of 2000 by the Court of the Sessions Judge for trial of Bomb Blast Cases, Coimbatore is hereby confirmed.

Consequently, Crl.M.P.Nos.1480 and 1481 of 2003 are also dismissed.

Index: Yes
Internet: Yes
Rao

To

1.The Deputy Superintendent of Police,
Special Investigation Team
Coimbatore.

2.The Court of the Sessions Judge
for trial of Bomb Blast Cases, Coimbatore.

3.The Public Prosecutor,
High Court, Madras.

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